

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

ANDRE M. DAVIS, CITY SOLICITOR
100 N. Holliday Street
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February 22, 2019

The Honorable President and Members
of the Baltimore City Council
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 18-0288 – York Corridor Business Improvement District

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0288 for form and legal sufficiency. The bill would create the York Corridor Business Improvement District as a Community Benefits District and Authority.

The City's power to establish community benefits districts comes from the Maryland General Assembly's enactment of Chapter 732 of the 1994 Laws of Maryland, which is codified in Section (63) of Article II of the Baltimore City Charter. *See, e.g., Piscatelli v. Bd. of Liquor License Comm'rs*, 378 Md. 623, 633-34 (2003) (express powers of Baltimore City are found in Article II of the Baltimore City Charter). The City may establish no more than six such districts by ordinance but fifty eight percent of the people in the district must approve the establishing ordinance in a special election before it becomes law. Charter, Art. II, § (63)(k). If the ordinance is approved and the district and Authority are established, the Mayor and City Council may not diminish services to the district simply because it is a separate community benefits district. Charter, Art. II, § (63)(i).

Currently, there are four such districts, each codified as a separate Subtitle of Article 14 of the Baltimore City Code: Charles Village Community Benefits District (Subtitle 6); Midtown Community Benefits District (Subtitle 7); Waterfront Management District (Subtitle 8) and Retail Business Districts (Subtitle 11). Charter, Art. II, § (63)(a)(1); *but see* Charter, Art. II, § (61) (General Assembly gave separate and different power to enact the Downtown Management District, which is codified in Subtitle 1 of Article 14 of the Baltimore City Code). The districts are managed by management authorities, which must be "proposed by the Board of Estimates of Baltimore City and approved through an ordinance by the Mayor and City Council." Charter, Art. II, § (63)(a)(3).

Assuming the Board of Estimates has proposed the Authority for this district, this bill must "provide procedures for a special election" to approve this ordinance "which may be administered by write-in ballots" and "provide criteria for the eligibility of voters" for that special election. Charter, Art. II, § (63)(k).



This bill must also address all of the following:

- (1) specify the powers and functions within the limits of this section, which may be exercised and conducted by the Authority and the amount of taxes or charges which may be imposed on properties in the district.
- (2) specify the duration of the Authority and define the boundaries of the district.
- (3) provide for the imposition and collection of the taxes or charges and for disbursement of the revenue therefrom to the Authority. The financial plan of the Authority, including its annual budget and its tax rate and schedule of charges, shall be subject to approval by the Board of Estimates. Taxes and charges imposed under this paragraph may not exceed those proposed by the Authority.
- (4) determine the organization and method of initial appointment of officers and board members of the Authority. The majority of the members of the board shall be owners or representatives of owners of properties in the district that are subject to taxes or charges under this section. A voting member of the board must be eligible to vote in the election under subsection (j) *{subsection (k)}* of this section.
- (5) determine what classes of property in the district owned by public service companies as defined in Article 78 of the Annotated Code of Maryland *{now, Public Utility Companies Article}* shall be subject to or exempt from taxes or charges under this section.

Charter, Art. II, § (63)(c).

This bill provides for all of these things.

There are certain functions that a Community Benefits District and its management Authority may NOT be allowed to do:

- (1) exercise any police or general powers other than those authorized by State law and City ordinance;
- (2) pledge the full faith or credit of the City;
- (3) impose taxes or charges in excess of those approved by the Board of Estimates;
- (4) exercise the power of eminent domain;
- (5) extend its life without the approval of the City Council;
- (6) except as otherwise provided by law, engage in competition with the private sector;
- (7) except as otherwise provided in subsection (i) *{subsection (j)}* of this section, revert charges or taxes collected pursuant to this section to the General Fund of the City;
- (8) be an agency of the Mayor and City Council of Baltimore or the State of Maryland and its officers and employees may not act as agents or employees of the Mayor and City Council of Baltimore or the State of Maryland;
- (9) employ individuals who reside outside the City of Baltimore; and
- (10) except as required or appropriate to facilitate its normal operations, incur debt.

Charter, Art. II, § (63)(e).

The language in this bill potentially violates Section (63)(e)(1) above in that provides the Authority with the ability to act pursuant to the Planning Commission's recommendations in the 2015 York Road Corridor Vision and Action Plan, as that plan may be amended over time by the Commission, thereby effectively authorizing the Planning Commission to exercise the general legislative powers conferred by the General Assembly on the Mayor and City Council in Section (63) of Article II of the City Charter. It does this by skipping the Mayor and City Council's required approval for additional powers, as required by Section (63)(c)(1) of Article II of the City Charter, and simply blessing in advance all such future powers that the Authority may need in order to carry out the Planning Commissions potential future directions. Although it may seem as if the Mayor and City Council can simply approve the Authority's ability to follow the Planning Commission in advance, this is not what can be read as the intended meaning of Section (63). Rather, rules of statutory construction dictate that all parts of Section (63) be read in harmony to avoid any superfluous provisions and that the more specific provisions govern over more general ones. *See, e.g., Thanner Enters., LLC v. Balt. County*, 414 Md. 265, 278 (2010) (citation omitted). Were the Mayor and City Council able to simply authorize this Authority to do whatever the Planning Commission said without a future ordinance to outline those additional powers, then Section (63)(c)(1) would in some ways be superfluous and the more specific provisions in Section (63)(e)(1) would not be given full effect. In addition, there is nothing in Section (63), or any part of Article II of the City Charter, that evidences the General Assembly's legislative intent to confer power on the Planning Commission to provide powers for the Authority. Nor does Section 72 of Article VI of the City Charter give the Planning Commission the power to direct a public corporation. And, it is not possible to give legislative or policy making power to an administrative body such as the Planning Commission. *See, e.g., City of Baltimore v. Wollman*, 123 Md. 310, 316 342 (1914); *accord Andy's Ice Cream v. City of Salisbury*, 125 Md. App. 125, 161 (1999); *see also* 72 Op. City Sol. 18, 20 (1980) (citing 73 C.J.S. §75, p. 381-382). To avoid this likely unintended consequence, this bill should be amended to remove Section 20-3(B)(4). Assuming that the recommendations of the Planning Commission are within the existing powers of the Authority, the Authority could implement them, or the Authority could return to the Mayor and City Council for additional authority by ordinance if necessary.

Additionally, the language in 20-4(A) needs to be amended because it says that the bill will create a "special taxing district." This community benefits district, when effective, will not a special **taxing** district as that term is used in Section (62A) of Article II of the Baltimore City Charter. (emphasis added). A community benefits district does not have most of the powers of a Special Taxing District. Rather, this bill creates a special **tax** district, as provided in Section (63)(d) of Article II of the Baltimore City Charter. (emphasis added). The distinction is immense and the correct language is required. Thus, the letters "ING" must be deleted from line 23 on page 4 of the bill. Although that phrase exists in the City Code for other benefit districts, it is not accurate.

The words "and, therefore, a governmental body, both politic and corporate," must also be deleted from lines 23 and 24 on page 4 of the bill because the Authority will not be such a body. As Maryland's highest Court has explained, it is a public corporation. *Floyd v. Mayor and City Council of Baltimore*, 407 Md. 461, 488 (2009). The heading in "(A) GOVERNMENTAL BODY" should be changed to reflect that the Authority is not a governmental body. This bill

could also be easily amended by removing all of Section 20-4(A) as it is unnecessary, confusing and confers no power on the Authority that it does not already possess by operation of state law.

Section 20-4(B)(1) must be amended to remove “or other means” because some of the other means left of acquiring property, including by condemnation, are not available to the Authority and this ordinance may not confer that power upon it. City Charter, Art. II, § (63)(e)(4). It would also be prudent to remove the phrase “both real and personal” from line 27 on page 4 because it could be read to prevent the Authority from acquiring, holding and using any intellectual property. By enumerating types of property not found in Section (63)(d)(2), the bill would be read to restrict the Authority. *See, e.g., Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 637-38 (2003) (“*ejusdem generis* is ‘based on “the supposition that if the legislature had intended the general words to be construed in an unrestricted sense, it would not have enumerated the specific things””).

The wording of Section 20-5(B)(3) must be changed because the Authority does not levy the taxes at issue here, but instead proposes such taxes be levied in addition to the other real property taxes levied by the City and State, consistent with state law. *See, e.g., Casey Development Corp. v. Montgomery County*, 212 Md. 138, 148 (1957) (levying a tax is a legislative function that the Authority could not do). Although this wording exists in the City Code for other Benefit Districts, it is not accurate and the wording should read: “Taxes may not be imposed against properties that are exempt under state law from ordinary property taxes.” City Charter, Art. II, §§ (63)(c), (d).

Although present in other Community Benefit District ordinances, the language in Section 20-6(F)(1) that provides that the Board may adopt “rules and regulations” is not wholly accurate as it is not a legislative or political body. Rather, it is more accurate to provide for bylaws only, as that term is what applies to public corporations. City Charter, Art. II, §§ (63)(d)(8), (e)(1). The phrase, if left in the bill, should be understood as not enacting any laws required to be followed by those in the District, but rather as additional processes that govern how the Board must act- i.e. a mechanism similar to a bylaw.

In considering this bill as a proposed new Community Benefits District, the City Council must do three things:

- (1) give consideration to the views of the property owners, the retail merchants, the property tenants, and the other members of the business and residential communities within the district;
- (2) make a determination that a district created under this section will reflect a diverse mix of business and residential properties; and
- (3) make a determination that a district created under this section will reflect a diverse economic, social, and racial mix.

Although the bill provides in Section 20-1(C) that such things have been considered, it is best if, at the hearing, the committee considers the business and residential community views and makes the two determinations.

Once established by the special election, the Authority is a public corporation with the power to “promote and market districts, provide supplemental security and maintenance services, provide amenities in public areas, provide park and recreational programs and functions.” Charter, Art. II, § (63)(a)(2). The Authority may request additional powers from the Mayor and City Council via ordinance. The Authority’s continued existence must be reauthorized every four years. 1997 Md. Laws ch. 655; 2000 Md. Laws ch. 89 (codified in City Code, Art. 14, §6-16); *see also* 2003 Md. Laws ch. 475.

As this bill is the required authorization to create the district and Authority, the Law Department approves this bill for form and legal sufficiency so long as the foregoing amendments are included. Assuming it is enacted by the Mayor and City Council, it does not become law unless and until fifty eight percent of the district approves it in a special election.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Hilary Ruley", is written over the typed name.

Hilary Ruley
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Mayor’s Office of Government Relations
Jeffrey Amoros, Mayor’s Office of Government Relations
Elena DiPietro, Chief Solicitor
Victor Tervalá, Chief Solicitor
Ashlea Brown, Assistant Solicitor

AMENDMENTS TO COUNCIL BILL 18-0288
(1st Reader Copy)

Proposed by: Law Dep't

Amendment No. 1

On page 4, delete lines 13 through 16.

Amendment No. 2

On page 4, in line 23, delete "ING" after "TAX".

Amendment No. 3

On page 4, strike "GOVERNMENTAL BODY" on line 21 and substitute "POWERS"; and in 23 and 24, strike "AND, THEREFORE, A GOVERNMENTAL BODY, BOTH POLITIC AND CORPORATE,".

Amendment No. 4

On page 4, in line 27, strike "BOTH REAL AND PERSONAL" and on the same page in lines 28 and 29 strike "INCLUDING ACQUISITION BY PURCHASE, LEASE OR OTHERWISE".

Amendment No. 5

On page 6, strike lines 14 and 15 and substitute "TAXES MAY NOT BE IMPOSED AGAINST PROPERTIES THAT ARE EXEMPT UNDER STATE LAW FROM ORDINARY PROPERTY TAXES."

Amendment No. 6

On page 8, in lines 6 and 8, strike ", RULES AND REGULATIONS."